

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) U04-0033.84	
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	First Named Inventor Scott LaDeff Vance		
	Art Unit 2618		Examiner Wen Wu Huang
	Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request. This request is being filed with a notice of appeal. The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.		
I am the			
<input type="checkbox"/> applicant/inventor.			
<input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.7.1. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)			
<input checked="" type="checkbox"/> attorney or agent of record. Registration number 33.742			
<input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____			
		Signature Charles L. Moore Typed or printed name 919-286-8000 Telephone number June 13, 2007 Date	
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.			

☐ *Total of _____ forms are submitted.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of Scott LaDell Vance)	
)	Confirmation # 3344
Application No. 10/709,345)	
)	
Filed: April 29, 2004)	
)	
Examiner: Wen Wu Huang)	
Group Art Unit: 2618)	
)	
Title: DEVICE AND METHOD FOR)	
HANDS-FREE PUSH-TO-TALK)	
FUNCTIONALITY)	

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Alexandria, VA 22313-1450

REMARKS IN SUPPORT OF PRE-APPEAL BRIEF REQUEST FOR REVIEW

Applicant submits that the current and preceding office actions issued by the Examiner in the present application contain clear errors in the Examiner's rejections as well as omissions of one or more essential elements needed for a *prima facie* rejection under 35 U.S.C. § 102 and/or 35 U.S.C. § 103.

Claims 1, 3-5, 12-15, 17, 18, 21, 22, 25-27, 31, 33, 36, 37 and 40-42 were rejected under 35 U.S.C. §102(e) as being anticipated by Lenz (U.S. Patent No. 5,101,504; hereinafter "Lenz"). Claim 1 recites: "wherein the push-to-talk sensor or switch includes at least one of an accelerometer, an air pressure sensitive switch, and a tilt sensor for sensing a change in a direction of force due to gravity..." Independent claims 15 and 31 recite similar features. Applicant respectfully submits that Lenz does not teach or suggest a push-to-talk sensor or switch that includes at least one of an accelerometer, an air pressure sensitive switch, and a tilt sensor for sensing a change in a direction of force due to gravity as provided by the embodiments of the present invention as recited in independent claims 1, 15, and 31. Lenz in column 2, lines 44-53 with reference to Figures 1 and 2 recites:

“In accordance with the present invention, the “push-to-talk” switch 24 is constructed with a push button, or switch actuator part 30 that is adapted to be actuated by the wearer lifting his shoulder. The wearer lifts his shoulder from the normal position Sa shown in phantom lines in FIG. 1 to a raised position Sb at which it presses against the switch actuating part 30 to depress and operate the switch 24. As shown in FIG. 2, the switch 24 is a push-button type with a plunger 32 that is depressed to close the switch.”

Accordingly, Lenz merely teaches an ordinary push-button type switch with a plunger and Lenz does not teach or suggest a push-to-talk sensor or switch that includes at least one of an accelerometer, an air pressure sensitive switch, and a tilt sensor for sensing a change in a direction of force due to gravity as provided by the embodiments of the present invention as recited in independent claims 1, 15 and 31.

The Examiner also asserted on page 2 of the Office Action dated as mailed 03/22/2007 that Lenz in column 2, lines 59-62 teaches that switch 24 senses a depression in the downward direction and the Examiner interpreted the direction of force due to gravity as “downward” direction. Applicant respectfully submits that this is an incorrect interpretation of column 2, lines 59-62 of Lenz which recites: “Applicant prefers to orient the switch 24 so the direction of actuation 34 is angled in a downward-outward direction (relative to the vertical center line 35 of the headset 10 and of the wearer).” Applicant respectfully submits that there is no reference to the direction of force due to gravity in this recitation of Lenz and Lenz is merely indicating the direction of actuation 34 of the switch 24 which is downward because the switch 24 is mounted in the headset 10 and is operated by the wearer’s shoulder which would be down relative to the headset when the wearer is standing or sitting. The operation of the push-to-talk switch of Lenz is immaterial with respect to the direction due to gravity; it is only dependent upon the relationship of the headset and the wearer’s shoulder.

Accordingly, Lenz fails to teach or suggest the features of independent claims 1, 15 and 31. For all of the reasons discussed above, independent claims 1, 15 and 31 are submitted to patentably distinguishable over Lenz, and reconsideration and withdrawal of the 35 U.S.C. §102 rejection of claims 1, 15, and 31 is respectfully requested.

With respect to the rejection of claims 3-5 and 12-14, these claims recite additional features which further patentably distinguish over Lenz. These claims recite further details related to either the accelerometer, the air pressure sensitive switch, or the tilt sensor in claim 1. Additionally, claims 3-5 and 12-14 depend either directly or indirectly from independent claim 1. Because of this dependency, claims 3-5 and 12-14 include all of the features of independent

claim 1. Therefore, claims 3-5 and 12-14 are also submitted to be patentably distinguishable over Lenz, and reconsideration and withdrawal of the Section 102 rejection of these claims is respectfully requested.

Turning now to the rejection of claims 17, 18 and 21 under 35 U.S.C. §102(e) as being anticipated by Lenz, claims 17 and 18 recite additional features with respect to the tilt sensor recited in independent claim 15 from which claims 17 and 18 depend. Claim 21 also depends directly from independent claim 15. Therefore, claims 17, 18 and 21 are submitted to be patentably distinguishable over Lenz, and reconsideration and withdrawal of the 35 U.S.C. §102 rejection of claims 17, 18 and 21 is respectfully solicited.

With respect to the rejection of independent claims 22 and 37, independent claim 22 recites: "detecting at least one of a predetermined movement of a motion sensor or an accelerometer, a tilt angle caused by a change in direction of force due to gravity, or air pressure...." Claim 37 recites similar features to independent claim 22. As previously discussed, Lenz merely teaches a push-button type switch with a plunger and does not teach or suggest the features of detecting at least one of a predetermined movement of a motion sensor or an accelerometer, a tilt angle caused by change in direction of force due to gravity, or air pressure as recited in the embodiment of the present invention in claims 22 and 37. Therefore, claims 22 and 37 are submitted to be patentably distinguishable over Lenz, and reconsideration and withdrawal of the Section 102 rejection of claims 22 and 37 is respectfully solicited.

With regard to the rejection of claims 25-27, 33, 36, and 40-42 under 35 U.S.C. §102(e) as being anticipated by Lenz, these claims recite additional features which are not taught or suggested by Lenz. Additionally, claims 25-27 depend either directly or indirectly from independent claim 22; claims 33 and 36 depend directly from independent claim 31; and claims 40-42 depend either directly or indirectly from independent claim 37. Because of these dependencies, these claims include all of the features of the respective referenced independent claim. Thus, claims 25-27, 33, 36, and 40-42 are respectfully submitted to be patentably distinguishable over Lenz, and reconsideration and withdrawal of Section 102 rejection of these claims is respectfully requested.

Claims 46-48 were rejected under 35 U.S.C. §102(b) as being anticipated by Brening (U.S. Patent No. 4,426,733; hereinafter "Brening"). Claim 46 recites:

"a hands-free push-to-talk sensor or switch operable by a preset audible signal, wherein the preset audible signal is one of a static signal, a white noise signal, or a predefined

keyword, group of keywords, number or group of keywords and numbers...”

In contrast, Brening in column 3, lines 9-15 recites:

“The electrical input signals V_{in} are input to a speech recognition circuit 9 which is responsive to certain predetermined spoken phrases, each defining a predetermined desired change in one or more of the operating conditions. The speech recognition circuit 9 produces a predetermined control signal in response to each of the recognized, predetermined spoken phrases.”

And Brening in column 4, lines 26-39 provides a list of control functions. Applicant respectfully submits that the list of control functions does not include a hands-free push-to-talk switch function as recited in independent claim 46. Accordingly, Applicant respectfully submits that claim 46 is patentably distinguishable over Brening, and reconsideration and withdrawal of the Section 102 rejection of claim 46 is respectfully request.

With respect to claims 47 and 48, these claims depend either directly or indirectly from independent claim 46, and by virtue of that dependency, contain all of the features of independent claim 46. Therefore, claims 47 and 48 are submitted to be patentably distinguishable over Brening, and reconsideration and withdrawal of 35 U.S.C. §102 rejection of these claims is respectfully requested.

Claims 9-11, 20, 28-30, 35 and 43-45 were rejected under 35 U.S.C. §103(a) as being unpatentable over Lenz as applied to claims 1, 15, 22, 31 and 37 and further in view of Brening and Murray (U.S. Patent Pub. No. 2005/0136848 A1; hereinafter “Murray”). This rejection is respectfully traversed. Claim 9 recites:

“wherein in the push-to-talk sensor or switch comprises the air pressure sensitive switch wherein a transmit mode of the communications device is activated in response to the air pressure sensitive switch receiving a preset air pressure.”

The Examiner cited paragraph [0033] lines 20-30 of Murray for teaching that a microphone comprises an air pressure sensitive switch. Applicant respectfully disagrees. Murray in paragraph [0033] lines 20-30 recites:

“A dynamic microphone is a microphone where the change in air pressure, *i.e.*, the sound energy moves the diaphragm (paper or plastic), which moves the coil of wire in the magnetic field of the permanent magnet of the dynamic microphone. Due to the movement of the coil through a magnetic field, an electrical current is produced in the coil of wire that represents the changing air pressure, *i.e.*, the sound energy.”

Applicant respectfully submits that Murray is merely describing the basic operation of a

microphone detecting acoustical or sound energy and converting the sound energy into an electrical signal. The air pressure sensitive push-to-talk switch as provided by the present invention as recited in claim 9 is distinguishable from the ordinary microphone of Murray. Furthermore, claim 9 depends directly from independent claim 1. Because of this dependency, claim 9 includes all of the features of claim 1. Applicant respectfully submits that Brening and Murray add nothing to the teachings of Lenz so as to render independent claim 1 unpatentable. Therefore, claim 9 is respectfully submitted to be patentably distinguishable over the combination of Lenz, Brening and Murray, and reconsideration and withdrawal of the 35 U.S.C. §103 rejection of claim 9 is respectfully solicited.

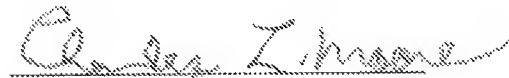
Regarding the rejection of claims 10, 11, 20, 28-30, 35, and 43-45 under 35 U.S.C. §103 as being unpatentable over Lenz in view of Brening and Murray, these claims recite additional features which patentably distinguish over the cited documents. Additionally, claims 10 and 11 depend directly from independent claim 9 and indirectly from independent claim 1; claim 20 depends from independent claim 15; claims 28-30 depend from independent claim 22; claim 35 depends from claim 31; and claims 43-45 depend from claim 37. Therefore, these claims include all of the features of their respective referenced claims. For all of these reasons, these claims are submitted to be patentably distinguishable over Lenz, Brening and Murray, and reconsideration and withdrawal of the Section 103 rejection of these claims is respectfully requested.

As the Examiner's rejections have been shown to be in clear error and lack essential elements of a *prima facie* anticipation rejection or a *prima facie* obviousness rejection, Applicants respectfully request that the claims of the present application be allowed to issue.

Respectfully submitted,

Date: June 13, 2007

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